had no direct knowledge of condition 3; none of the correspondence produced in court which passed from or to Lowndes Lambert made any reference to condition 3 of the policies. They did study and request for amendments but I find that such study and amendments related exclusively to the wording of the scope of insurance and to the insured parties of the policies. Further, Lowndes Lambert had worked on the basis of the Munich Re Form which was not cancellable. In all the circumstances I am unable to impute on them any constructive notice of condition 3 before its invocation. Again it was observed on behalf of the first defendants that the plaintiffs had requested for extensions after the notice of cancellation and that at no time did the plaintiffs nor Lowndes Lambert make any complaint about the existence of condition 3. On these and other facts the first defendants contended that the plaintiffs had affirmed the policies which included condition 3. I have to reject this submission as without merit.

The first defendants also raised the related plea of estoppel and contended that on the same facts the plaintiffs had represented to them that they (the plaintiffs) were content with the inclusion of condition 3. In the light of my findings that the plaintiffs did not know of the existence of condition 3 it is not tenable to conclude that they had consciously made the representation by conduct: see *Woodhouse AC Israel Cocoa Ltd SA* v *Nigerian Produce Marketing Co Ltd*[1] which required a representation to be clear and unequivocal to warrant the operation of an estoppel.

For these reasons the plaintiffs are entitled to rectification and judgment will be entered for the plaintiffs against the first defendants with damages to be assessed and costs.

Before I part with this judgment, I should consider the alternative submission of the plaintiffs. They submitted that if (which they denied) condition 3 was agreed or otherwise was subsisting by reason of estoppel or variation the policies are to be construed, or have implied therein, a term to the effect that any right of cancellation may only be exercised for reasonable cause. They again stressed that the whole object of the insurances taken out with the first defendants was to provide cover for the estimated duration of the Centrepoint project. Some of the applicable principles were re-affirmed in the leading case of *Trollope & Colls Ltd* v *NW Metropolitan Regional Hospital Board*[12] at pp 606D-610D per Lord Pearson, at p 613 bottom to p 614F per Lord Cross and may be summarized as follows:

(a) no term can ever be implied which would conflict with an express term;
(b) no term can ever be implied just because, in the light of subsequent events, it may seem reasonable and desirable;
(c) a term will only be implied where it is essential, that is, without it, the agreement would be without 'business efficacy'; and
(d) no term will be implied unless the court can say that both parties must have intended it.

Plainly the plaintiffs were unable to show the necessity to imply the term nor could this court say that the term canvassed on behalf of the plaintiffs must have been intended by both parties. It has to be noted that a cancellation clause such as condition 3 was not unusual in the insurance industry and it had been acceptable because a replacement cover could be arranged within a reasonably short period as had happened in this case, although the premium might be considerable. It is therefore quite plain that it is not necessary to work the policies by implying a term to cut down the insurers' power of cancellation. I am therefore unable to construe the policies or imply into them the term as suggested by the plaintiffs.

Order accordingly

Solicitors: *Godwin & Co*; *Cooma Lau & Loh*; *Niru & Co.*

Reported by *Terence Tan Bian Chye*

Goh Chong Ying v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE APPEAL NO 123/86
CHUA J
23 MARCH 1989

Evidence – Accomplices – Corroboration of each other – Inconsistencies of evidence – Interference with trial judge's findings – Penal Code (Cap 224, 1985 Ed), ss 34 & 420 – Prevention of Corruption Act (Cap 241, 1985 Ed), ss 5(b), (c) & 6B – Evidence Act (Cap 97, 1985 Ed), ss 116 illustration (b) & 135

Criminal Procedure – Trial judge's findings – Appeal court's overturning

Criminal Law – Corruption – Question of fact – Prevention of Corruption Act (Cap 241, 1985 Ed), ss 5(b), (c) & 6B

The appellant was charged and tried with FSS on two charges of cheating the HDB, a statutory board, and with giving a corrupt gratification to PP. The appellant was also charged with and tried for offering a corrupt gratification to TYK. Although FSS was acquitted on both charges, the appellant was convicted on all three charges. He was sentenced to 18 months' jail on the first charge and to 12 months' jail on each of the remaining two charges. The sentences on the first two charges were to run consecutively. The appellant appealed against his convictions and sentences. One of the grounds of appeal was that the trial judge received as relevant PP's testimony that the appellant had bribed him on a previous occasion, for which the appellant was not charged. It was also alleged that the two main prosecution

witnesses, PP and TYK, who were accomplices, had contradicted each other when giving evidence, and their evidence should be rejected

Held, allowing the appeal as to convictions and sentences:

(1) Evidence in respect of past criminal activities of an accused person is inadmissible. Here, the evidence of PP was plainly intended to show that the appellant was guilty of a criminal act other than the one with which he was charged, for the purpose of leading to the conclusion that he was a person likely from his past criminal conduct or character to have committed the offences for which he was being tried.

(2) Such evidence was irrelevant and the appellant was greatly prejudiced by the admission of such evidence.

(3) The trial judge relied on the testimony of two accomplices. There were many material inconsistencies, self-contradictions and discrepancies, which were serious and should cast grave doubts on the credibility of the two prosecution witnesses.

(4) One accomplice cannot corroborate another. The trial judge failed to realize this. In addition, the documentary exhibits do not support the accomplices' evidence.

(5) There was therefore justification for interference with the decision of the trial judge. The appeal was allowed, and the convictions and sentences were set aside.

Case referred to

1 *Poon Soh Har & Anor* v *PP* [1977] 2 MLJ 126 (refd)

Legislation referred to

Evidence Act (Cap 97, 1985 Ed) ss 116 illustration (b), 135
Penal Code (Cap 224, 1985 Ed) ss 34, 420
Prevention of Corruption Act (Cap 214, 1985 Ed) ss 5(b), (c), 6B

Peter Fernando for the appellant.
Ismail Hamid for the respondent.

Cur Adv Vult

Chua J: The appellant, Goh Chong Ying, was charged and tried, with one Foo See Sun, on the following two charges:

> (1) You, Goh Chong Ying (m/34 years), NRIC 0138000/A, Foo See Sun (m/35 years), NRIC 2007088/I, are charged that you, between 27 July 1984 and 30 November 1984, at #12-03 Blanco Court, Singapore, in furtherance of the common intention of both of you, cheated the Housing & Development Board, Singapore, into believing that Anson Piling (S) Pte Ltd had, up to 26 August 1984, supplied and installed 81,688.25 metre tonnes of reinforced concrete piles valued at $76,215.13 at Block 513 and Block 541 of Bukit Batok Neighbourhood 5 Contract 6 site when in actual fact the reinforced concrete piles supplied and installed at the said two blocks of flats were only 57,471.25 metre tonnes valued at $53,620.67 and in consequence, dishonestly induced the Housing & Development Board to pay Anson Piling (S) Pte Ltd an additional amount of $22,594.46 which the Housing & Development Board would not have done had it known the true state of affairs, and you have thereby committed an offence punishable under Section 420 read with Section 34 of the Penal Code, Chapter 103.
>
> (2) You, Goh Chong Ying (m/34 years), NRIC 0138000/A, Foo See Sun (m/35 years), NRIC 2007088/I, are charged that you, between 17 August 1984, at the site office of Bukit Batok Neighbourhood 5 Contract 6, Singapore, in furtherance of the common intention of both of you, did corruptly give a gratification of a sum of $1,000 (Dollars: One Thousand only) to an agent, namely, Pannirselvam s/o Pomman, a Clerk-of-Works in the employ of the Housing & Development Board, Singapore, through Ng Jwee Seng, the Administration and Finance Manager of Anson Piling (S) Pte Ltd, as an inducement for showing favour to Anson Piling (S) Pte Ltd, to wit, colluding with you in cheating the Housing & Development Board by inflating the penetration lengths of the reinforced concrete piles installed at Block 513 and Block 541 of Bukit Batok Estate, and you have thereby committed an offence punishable under Section 6(b) of the Prevention of Corruption Act, Chapter 104, read with Section 34 of the Penal Code, Chapter 103.

The appellant was also charged and tried on another charge:

> You, Goh Chong Ying (m/34 years), NRIC 0138000/A, are charged that you, on or about 14 December 1984, at the 2nd Home Restaurant and Lounge, Textile Centre, Singapore, did corruptly offer a gratification of a sum of $25,000 (Dollars: Twenty-five Thousand only) to one Tan Yong Kwang as an inducement for not reporting you for having cheated the Housing & Development Board by submitting false inflated paylengths of the reinforced concrete piles installed at Block 513 and Block 541 of Bukit Batok Neighbourhood 5 Contract 6, and you have thereby committed an offence punishable under Section 5(b)(c) of the Prevention of Corruption Act, Chapter 104.

The appellant was convicted on all the three charges. The other accused, Foo See Sun, was acquitted on both the charges. The public prosecutor has not appealed against the order of acquittal.

The appellant was sentenced to 18 months' imprisonment on the first charge and to 12 months' imprisonment on each of the remaining two charges. The sentences on the first two charges were ordered to run consecutively. The appellant now appeals against his convictions and sentences.

The prosecution case was this. Anson Piling (S) Pte Ltd ('the company') in 1984 were piling contractors. The appellant was the managing director and Foo See Sun was a director of the company. In March 1984, the company obtained the HDB Term Contract No 5 ('the contract') under which it was to supply and drive, at HDB housing sites, a total of three million metre tonnes of reinforced concrete piles at $0.933 per metre tonne.

After obtaining the contract the company engaged Wee Sum Engineering ('Wee Sum') as their subcontractors to carry out the piling works at the HDB building sites covered by the contract. The company supplied the reinforced concrete piles whilst Wee Sum provided the piling machines and the necessary labour to drive the piles.

The established procedure was for progress payments to be made by the HDB to its piling contractors on the basis of 'paylengths' or the penetration lengths of the piles driven to the ground as calculated by the HDB clerk-of-works at the site. The penetration lengths of the piles were recorded daily by the HDB clerk-of-works on set papers and were then transferred to the piling records maintained by the clerk-of-works for the purpose of monthly progress payments. His duties included supervising the piling to ensure correct lengths of piles that were driven in and maintaining accurate records of pile penetration lengths. The HDB supervising engineer would verify the contractor's claims of the piling works done according to the piling records maintained by the HDB clerk-of-works. These records would ultimately be sent to the HDB contracts officer for processing payments to its piling contractor.

The company was first engaged in piling works at HDB building sites under the Bukit Batok Neighbourhood 5 Contract 2 ('N5C2').

Pannirselvam s/o Pomman ('Pannir') was posted as the HDB clerk-of-works at N5C2 in early July 1984, Foo See Sun approached Pannir and told him that there was a lot of pile wastage during piling and in order to help cover losses from the wastage he asked Pannir to inflate the penetration lengths by one to two metres in his piling records. Foo promised to give Pannir $1,000.

Pannir agreed to Foo's suggestion after Pannir had discussed the matter with his colleague Justin Lee Chee Leong, who had similarly helped Foo for a pecuniary reward.

Pannir inflated the piling lengths at N5C2 and he was subsequently paid $1,700 by the appellant at the company's office where Justin Lee was also present.

In early August 1984, Pannir was posted to another site covered by the Bukit Batok Neighbourhood 5 Contract 6 ('N5C6'). He was the only clerk-of-works at that site. Piling works for Blocks 541 and 513 were being carried out. Pannir asked the company's foreman Tan Yong Kwang how much inflation to the paylengths in the piling records was to be done. When Tan replied that he did not know anything about the inflation, Pannir telephoned the appellant, whom he knew was the managing director of the company.

Pannir asked the appellant how much to inflate. The appellant told Pannir to inflate the piles by two to four metres per pile. Pannir agreed to do so as he had done the same thing at N5C2 for reward.

Later when Tan Yong Kwang asked Pannir he was told that the inflation of the paylengths was to be between two to four metres. Tan then went to see the appellant and told the latter what Pannir had told him and that he was not clear what was going on.

Tan Yong Kwang was told by the appellant that he (Tan) did not have to understand about this and that he was merely to copy Pannir's piling records when he prepared Anson Piling's records to be submitted to HDB.

On 30 July 1984, the appellant gave a note book (exh P14) to Tan Yong Kwang instructing him to record in P14 the figures of the actual piling done as those figures were to be the basis of payment by the company to Wee Sum.

Tan Yong Kwang maintained in his note book P 14 details of the number, type and lengths of piles actually driven at the sites of Blocks 541 and 513. As instructed by the appellant, Tan prepared Anson Piling's records (exhs P11 and P11A) according to the piling records maintained by Pannir which contained inflated paylengths of piles.

Pannir, as the clerk-of-works, kept daily piling records for Block 541 (exh P10) and for Block 513 (exh P10A). He inflated the penetration lengths of the piles driven into the site at Block 541, some by three metres and some four metres. He, however, inflated the penetration lengths of only a few of the piles driven into the site at Block 513 by two metres.

Pannir showed his inflated records to Tan Yong Kwang who copied these figures to form his own records. Pannir and Tan then initialled each other's copy of these records (exhs P10, P10A, P11 and P11A).

Pannir submitted his inflated piling records to his supervising engineer Lim Teck Choy. No one saw that the records were inflated.

Around 17 August 1984, after Pannir had submitted his inflated piling records to Lim Teck Choy, Ng Jwee Seng, the manager of the company, came to the site office at Bukit Batok and handed an envelope containing $1,000 cash to Pannir.

Pannir was not satisfied with the $1,000. He expected a larger sum as he thought that the company had made a substantial profit from the inflated paylengths. At the end of August 1984, he telephoned the appellant at his office and asked for $5,000. The appellant quickly put the receiver down. Pannir then decided to forget the whole matter and did not try to contact the appellant again.

Tan Yong Kwang left the company on 14 December 1984, without surrendering the note book P14. Late that afternoon the appellant telephoned Tan at his home and arranged to meet him at the 2nd Home Restaurant and Lounge at the Textile Centre that night. At this meeting the appellant offered Tan $25,000 to keep the company's secret that the HDB had been deceived by the submissions of inflated paylengths by the company. Tan was so surprised that he did not know what to say. The appel-

lant told Tan to go back and think it over and the appellant left the lounge. Tan remained at the lounge and was joined by Ah Quee, the 'boss' of Wee Sum, and a friend.

About 45 minutes later, Foo See Sun appeared at the lounge with four or five of his friends and they sat at a nearby table. Foo came up to Tan and asked the latter to join him at his table. Tan then went over to Foo's table. Foo accused Tan of trying to extort $25,000 from the appellant. Tan denied this. Foo threatened Tan with bodily injury and offered Tan a few thousand dollars instead. Foo told Tan to go back and think it over. Tan was very frightened and the next day he lodged a police report.

Tan Yong Kwang did not hear anything from the police for several weeks. He was then assisting his father as a hawker. On the night of 15 December 1984, Tan saw two of the four men who accompanied Foo See Sun on the night of 14 December 1984, near his stall. They walked up and down and stared at him and pointed warning figures at him and uttered something. On 16 January 1985, Tan went to a coffee shop near his stall and saw one of the two men. The man stared at him. Tan took his friend's advice and reported the matter to the CPIB on 21 January 1985.

Following CPIB investigation, the appellant and Foo See Sun were arrested on 26 April 1985, and charged in court on the following day.

The defence

The appellant was the managing director of Anson Piling (S) Pte Ltd and Foo See Sun a co-director. In January 1984 the company was successful in obtaining a term contract from the HDB to do piling works at various HDB building sites. The appellant's duties were to liaise with the HDB. He had also to discuss with the sub-contractors, suppliers and office staff how to embark on the project. In respect of HDB projects, he was in charge of overall administration. The company had Wee Sum Engineering as sub-contractors for piling works.

In 1984/85 the company had seven or eight foremen at the field. There were six other staff in the company, including Mrs Dolly Ang, the administrative executive, who was in charge of administration, HDB claims and correspondence; and Ng Jwee Seng, the administrative and finance manager.

The duties of a foreman were generally to carry out the field operations of the company – the physical execution of a project. Every site foreman was given a note book to record daily all the information at the site – information as to the progress of the piling project before the project began. The note book exh P14 was such a note book given to a foreman. The appellant could not remember if he personally gave P14 to his foreman Tan Yong Kwang. He denied having instructed Tan to record actual paylengths in P14 whilst maintaining Anson Piling's daily piling records according to HDB clerk-of-works Pannir's inflated figures.

Mrs Dolly Ang, the appellant's adminstrative executive, would prepare the monthly claims to the HDB according to the daily piling records. The appellant's only interest was in the total metre tonnes piled at various sites and in how much payment he would be getting from the HDB the following month. The appellant did not look at the monthly figures that Dolly Ang kept.

Wee Sum was paid on the basis of Anson Piling's figures which were supplied to Wee Sum by the company's accounts and general clerk, Miss Chiang Kwee Hong.

The appellant denied that he conspired with Pannir to inflate the penetration lengths of 170 piles at Block 541 or about half of the 46 piles at Block 513. Pannir's allegation that Pannir telephoned the appellant on 27 July 1984, and asked how much to inflate and the appellant told Pannir two to four metres was untrue. The appellant also denied that he had instructed his foreman Tan Yong Kwang to copy Pannir's records of inflated paylengths. The appellant had not given Tan a note book with instructions to keep in it the actual penetration lengths.

The appellant denied that he gave Pannir $1,700 as a reward for Pannir and Justin Lee for inflating penetration lengths at N5C2. He further denied having received a telephone call from Pannir at the end of August 1984 asking for $5,000. Nor did he give Ng Jwee Seng any envelope containing $1,000 to be given to Pannir.

The appellant did not know that there were two sets of piling records, exhs P10 & P14. The first time he came to know of them was when he was shown Tan Yong Kwang's note book P14 at the CPIB by the investigating officer, Yeo Peng Soon.

The appellant did not agree with Tan Yong Kwang's version of his resignation. The appellant's version was that in early December 1984 Steven Tay, the HDB site engineer at Bishan, telephoned the appellant and complained that Tan Yong Kwang had not been to the site for a number of days when there was so much work which had not been done. He then instructed Ng Jwee Seng to get a replacement foreman which was done. Ng informed the appellant of Tan's resignation in early December 1984.

On 14 December 1984, Tan Yong Kwang telephoned the appellant in the evening and requested that they meet that evening for a discussion. Tan suggested a meeting at the top floor lounge of the Textile Centre. The appellant told Tan that after he had finished his discus-

sions with Foo See Sun he would proceed to the lounge to meet Tan.

After the discussions with Foo See Sun, the appellant alone went to the lounge at the Textile Centre. There he met Tan who was there with three or four persons, one of them was introduced to the appellant as 'Ah Seng'.

This was what happened at the lounge according to the appellant:

> Ah Seng asked me if I knew the UE (United Engineers) matter. UE was then under investigation for overclaims. Ah Seng did most of the talking. Ah Seng told me that as the boss I had ill-treated Tan. Tan then told me that he had done something at Bukit Batok. Ah Seng then said that as I was not steady they too were not steady. I asked him what they all wanted. I was looking at Ah Seng when I asked that. Ah Seng said that unless I paid $50,000 I would have to be prepared and be careful. I told them I did not have the money. Tan told me I could borrow from Hooi's brother-in-law.

The appellant bargained with both Tan and Ah Seng and the amount was reduced to $25,000. The appellant was given two weeks to raise this amount which was to be paid into Tan's POSB bank account the number of which he copied in his diary and also on a piece of paper.

When the appellant returned home between 9 pm and 10 pm he paged for Foo See Sun who later telephoned him. He informed Foo that Tan Yong Kwang had tried to extort $50,000 from the company which he had reduced to $25,000. At about 2 am on 15 December Foo telephoned the appellant and informed him that he and a few men had confronted Tan at the lounge at the Textile Centre and that Tan had apologised and that the matter had been settled.

A few days later the appellant was informed by his clerk Miss Chiang Kwee Hong that she had received two telephone calls. The first call was from a man stating that the company was collapsing and using vulgar language. The second call was also from a man asking for Foo See Sun and the man told her in vulgar language that the company would be taken care of. She did not know the callers. The appellant assumed that the callers were Tan Yong Kwang's friend and that Tan wanted to 'fix up' the company. The appellant did not know what to do, whether to pay Tan or not, but decided to delay payment.

Before the appellant went to Hong Kong at the end of December or early January 1985, he wrote on a piece of paper Tan Yong Kwang's POSB bank account number and gave it to Ng Jwee Seng. He told Ng that Tan wanted some money and that he might call Ng to put money into Tan's account.

The appellant made another trip to Hong Kong on 30 January 1985, and returned on 16 February 1985 at 2 am. He was picked up by Yeo Peng Soon and other CPIB officers. The appellant's house and office were searched. He was released at 11.30 am the same day.

Counsel for the appellant submits that the trial judge erred in law in receiving as relevant and admissible the evidence of Pannir that when he was first posted to N5C2 early in July 1984, Foo See Sun approached him and asked him to inflate the penetration lengths of the piles by one to two inches in his piles record and that Foo promised to give him $1,000 and that he was paid $1,700 by the appellant at Anson Piling's office and that Justin Lee was then with him.

It is clear from the decision of the Court of Criminal Appeal in *Poon Soh Har* v *PP*[1] that evidence in respect of past criminal activities of an accused person is inadmissible.

Here the evidence of Pannir was plainly intended to show that the appellant had been guilty of a criminal act other than that with which he was charged, for the purpose of leading to the conclusion that he was a person likely from his past criminal conduct or character to have committed the offences for which he was being tried. It is to be noted that the evidence of Pannir did not implicate the appellant. It was Foo who approached Pannir and offered the bribe. The evidence of Pannir could not be said to be relevant to any of the issues in this case.

The trial judge had wrongly considered and improperly relied on Pannir's evidence when he found as a fact, 'established on the evidence adduced by the prosecution', that Foo See Sun asked Pannir in July 1984 to inflate the penetration lengths of the piles and offered Pannir a bribe of $1,000 and that Pannir was subsequently paid $1,700 by the appellant at Anson Piling's office in the presence of Justin Lee. Justin Lee, who was present at the trial, was not called by the prosecution. The wrongful admission of Pannir's evidence had greatly prejudiced the appellant.

Counsel for the appellant says that on a number of significant matters the accomplices Pannir and Tan Yong Kwang contradicted themselves. It is submitted that the trial judge failed to take into proper consideration these contradictions and that he wrongly dismissed the contradictions he found as minor and insignificant.

The contradictions which counsel for the appellant refers to are these:

(1) Pannir testified that when he first met Tan, Tan knew that he was inflating the paylengths of the piles, but Tan wholly contradicted Pannir as to his own personal knowledge when they first met.

The trial judge wholly ignored and failed to consider the conflicting evidence when he found as established, 'on the evidence of the prosecution', that 'when Tan did not know anything about the inflation Pannir telephoned the first accused (appellant)'. This finding is wrong in fact.

(2) Pannir said that he did not at any time tell Tan the length per pile that he was inflating in his records. Tan contradicted Pannir on this. He said that after he had ascertained from his assistant Chua Kee Kon that Pannir was inflating the paylengths of the piles, he asked Pannir about it and Pannir told him that he (Pannir) had added between two and four metres.

The trial judge erred in fact in his finding that 'Tan did not know anything about the inflation'.

(3) Pannir and Tan painted completely different pictures on the question of the amount the appellant was to pay as gratification and who was to ask and get the payment for Pannir. Pannir said that he had asked Tan to get $2,000 from the appellant for inflating the figures. He said he did not discuss with the appellant the amount of the payment but left it to the appellant. He had expected to receive $5,000. Tan, however, said that Pannir did not ask him to get $2,000 from the appellant and that Pannir told him that he had asked for $2,000 but was only given $1,000.

The trial judge clearly erred in fact in finding that 'Pannir received $1,000 from the first accused (appellant)'. It ignores the contradiction of the accomplices on this point. There was absolutely no evidence that the alleged payment of $1,000 was from the appellant. The trial judge gave no consideration to Pannir's evidence that 'I thought it was from Goh'.

(4) The accomplices completely differed on what allegedly took place in the site office when payment was allegedly made by Ng Jwee Seng, the manager of the company.

The clear evidence of Pannir was that when Ng came and handed an envelope containing a $1,000 note he was alone. He said Ng did not tell him that the envelope contained money. At first he said that Ng did not say anything to him then but in cross-examination he said that Ng passed the envelope to him and asked him to check and walked away.

Tan Yong Kwang's evidence was that when Ng came Pannir was with him at his table having a conversation. Ng came to Tan's table and there handed an envelope to Pannir who opened the envelope in his presence. He did not know what was inside the envelope as Pannir and Ng walked away to Pannir's table.

The trial judge held that the credit of Ng Jwee Seng was impeached as regards his evidence on the receipt of the envelope that he gave to Pannir. He had made a contrary statement to the CPIB.

The trial judge made a finding, 'established on the evidence adduced by the prosecution', that 'around 17 August 1984, after he had submitted his pile records to his supervising engineer Lim Teck Choy (PW2), Pannir received $1,000 from the first accused (appellant). The money was in an envelope which was handed to him at the site office at Bukit Batok by Ng Jwee Seng (PW10), the manager of Anson Piling.'

The trial judge did not give proper consideration to the respective evidence of Pannir and Tan. Had a proper consideration been made the trial judge could not have found as he did.

(5) It was the evidence of Pannir that he made proper entries in exhs P10 and P10A except for the entries of the lengths of paylengths which he said he had inflated. In all other respects he said his records in P10 and P10A were true and correct – the date when the pile was driven, the cut-off length of each pile, final set, pile number, total number of piles driven into the ground on a particular day, the length of each pile above or below ground.

The prosecution's case was that Tan Yong Kwang merely copied Pannir's records P10 and P10A to form his own records exhs P11 and P11A. The exhs P10, P10A, P11 and P11A are therefore identical in all these respects. Further, Tan said in evidence that the appellant gave him a note book exh P14 in which he maintained records of the actual paylength of each pile. Tan said that P14 was an accurate record of each day's piling. Pannir said that he kept no record of how much he had inflated for each pile.

Using P14 as the sole basis, the prosecution arrived at the sum of $22,594.46 that HDB had been cheated of by showing the difference in the records of paylengths between P14, P10 and P10A.

The trial judge found that Tan had 'diligently maintained' P14. He also found as a fact that the paylengths had been inflated. If P14 was in fact diligently maintained by Tan and P10 and P10A were true and proper in all respects except the entries on paylengths, there should be no material differences in respect of all other information in P10, P10A and P14. However, a careful and proper scrutiny of P10, P10A and P14 reveals inherent contradictory entries which Tan could not explain. When confronted with the differences Tan had said: 'I do not understand'; 'Yes, that was my error'; 'I do not understand how he (Pannir) did that'; 'I do not understand why he (Pannir) did that'; 'I do not know why his (Pannir's) records are wrong'; and 'Yes, all of Pannir's records are not accurate'.

The evidence regarding the 'above ground' and 'below ground' measurements to determine the lengths of penetration was that no two records of these measurements done by two different persons could be identical.

In P14, P10 and P10A absolutely identical measurements of the 'above ground' or 'below ground' measurements were recorded.

No reliance should have been placed on Tan Yong Kwang's record P14. His evidence was that he based his record of what the actual penetration lengths for each pile was by he himself usually taking the measurements at the site of the length of pile above ground and he would also 'speak to the workers as to the penetration lengths' and he would then prepare the entries for each day. He admitted that he was not at the site all the time. He also admitted that P14 had errors and mistakes. He admitted that there were errors in the calculation of penetration and paylengths in a number of cases.

Tan said that the appellant told him to record the measurements of the actual piling on to P14 and when the appellant handed P14 to him he was told that the company would pay the correct sum of money to Wee Sum based on his records in P14. In cross-examination, he agreed that in respect of an invoice of Wee Sum, dated 11 September 1984, for $13,968.84 (exh P33), Wee Sum was paid not according to his figures but Pannir's.

Kang Gim Chye, a partner in Wee Sum Engineering Company, said in evidence that in respect of the invoice exh P33 and another invoice of his firm, exh P34, the company paid his firm according to the lengths that the company claimed from HDB.

According to Tan, he was in sole charge of both the contract sites at Block 513 and Block 541 until the evening of 13 December 1984. But the daily piling records exhs D4 and D5 clearly show that from 29 November 1984, the daily piling records were maintained by another foreman Hooi Ah Tee. When confronted with this evidence Tan agreed that he did not maintain the records from 28 November 1984 to 14 December 1984. He explained:

> At that time I did not maintain the records in this form and waited until end of December to copy from a note book into the daily record form. The note book is similar to the one in P14. This is because of a lot of work as I had to be in charge of two sites. When I left I handed the note book to Ng Jwee Seng.

When asked why he did not hand over P14 when he left the company on 14 December 1984, he said that 'they did not ask for it and I did not think it important'.

The trial judge in his grounds of decision said:

> I gave the most careful consideration to the evidence adduced by the prosecution, particularly because it was pivoted on the evidence of the two accomplices Pannir (PW8) and Tan Yong Kwang (PW9). I treated the evidence of the accomplices with great caution as is required by the Evidence Act, s 116, illus (b); s 135. There were minor inconsistencies in their evidence but neither witness could be faulted on any of the material aspects of his testimony despite being subjected to a gruelling cross-examination. I had no reason to disbelief any of the prosecution witnesses and their evidence was supported by the documentary exhibits that were tendered by the prosecution.

The trial judge relied entirely on the testimony of the two accomplices. He had wrongly admitted and relied on the evidence of the appellant's allegedly past criminal act. He did not pay proper and careful consideration to the evidence of the accomplices. The many material inconsistencies, self-contradictions and discrepancies were serious and should cast grave doubts on the credibility of Pannir and Tan Yong Kwang. The trial judge failed to realize that one accomplice cannot corroborate another. The documentary exhibits do not support the accomplices' evidence.

I am, therefore, of the view that there is justification for interference with the decision of the trial judge.

The appeal is allowed, the convictions and sentences are set aside.

Appeal allowed.

Solicitors: *Leo Fernando.*

Reported by *Terence Tan Bian Chye*

Sim Ah Ngoh v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE APPEAL NO 387/87
CHAO HICK TIN JC
10 MARCH 1989

Criminal Law – Armed robbery – Common intention to commit such – Extent to which person not at scene of crime is liable – Penal Code (Cap 224, 1985 Ed), ss 392 & 397

Evidence – Burden of proof at end of prosecution's case – Defence's failure to allege no case to answer – Accomplices' evidence

Criminal Procedure – No case to answer – Setting aside of subordinate court judgment – Appeal court's powers to set aside trial judgment – Criminal Procedure Code (Cap 68, 1985 Ed), s 261

The appellant was charged that she had with L and O in furtherance of their common intention committed armed robbery, of her husband and his mistress. L and O were the prosecution witnesses. She was convicted by the trial judge and sentenced to three years' imprisonment. She appealed against both her conviction and the sentence. The fact that a robbery occurred was not in dispute. The only issue was the role of the appellant in it.

Held, allowing the appeal:

(1) To warrant the appellant's conviction, the following had to be proved: that the appellant was at the scene of the crime with L and O, the common intention of the three of them was to commit robbery, the appellant was armed with two knives (sic), and the items mentioned in the charge were taken from the victim.